

NO. 18-0140
MEMORANDUM OF AGREEMENT
VANCOUVER FRASER PORT AUTHORITY
AND
NORTHWEST SEAPORT ALLIANCE

AUTHORITY: Vice President, Corporate Social Responsibility
APPROVAL DATE: May 1, 2018
DATE: May 1, 2018
SUBJECT: Funding for the Northwest Ports Clean Air
Strategy 2018 Review and Update

THIS AGREEMENT ("Agreement") is made as of the 1st day of August, 2018.

BETWEEN:

VANCOUVER FRASER PORT AUTHORITY, a corporation established pursuant to the *Canada Marine Act*, with a place of business at 100 The Pointe, 999 Canada Place, Vancouver, British Columbia, Canada V6C 3T4 (the "Authority");

AND:

NORTHWEST SEAPORT ALLIANCE, a Washington state USA port development authority, having a place of business at PO Box 1837, Tacoma, Washington, USA 98401.

RECITALS:

- A. The Authority, the Northwest Seaport Alliance, the Port of Tacoma, and the Port of Seattle have agreed to complete the Northwest Ports Clean Air Strategy 2018 Review and Update Report (the "Report") and that the Authority will administer the completion of the Report;
- B. The Authority has entered into Contract No. 18-0130 with Pinna Sustainability Inc. ("Pinna") dated for the completion of the Report; and
- C. The Authority has entered into agreements with the Port of Tacoma and the Port of Seattle on substantially the same terms and conditions as this Agreement wherein the Port of Tacoma and the Port of Seattle have each agreed to fund 22.2 percent of the costs for the preparation of the Report.

NOW THEREFORE in consideration of the mutual covenants and agreements contained in this Agreement, and other good and valuable consideration, the sufficiency of which is acknowledged, the parties mutually covenant and agree as follows:

Purpose

1. The purpose of this Agreement is to establish the obligations of the Authority to administer the completion of the Report and the obligations of the Northwest Seaport Alliance to fund 22.2 percent of the costs associated with the facilitation and project management services to prepare the Report, per the scope of work and cost of services identified as the "base tasks" outlined in Pinna's proposal dated April 11, 2018, a copy of which is attached as Schedule "A" (the "Services").

Administration

2. Development of the Report will be administered by the Authority in cooperation with the Northwest Seaport Alliance, the Port of Tacoma and the Port of Seattle. No board will be established to complete this effort. The Authority will be responsible for: (a) contracting, overseeing, and paying Pinna for providing the Services; (b) overseeing the drafting of the Report; and (c) overseeing the production and distribution of the final Report. Northwest Seaport Alliance will respond to information requests from Pinna directly.

Funding

3. The costs of the Services being provided by Pinna, whether incurred prior to or after this Agreement comes into effect, will be shared with the Authority paying 33.3% of the costs, and the Northwest Seaport Alliance, the Port of Tacoma, and the Port of Seattle each paying 22.2% of the costs. Pinna will invoice the Authority directly for the costs of providing the Services. The Authority will invoice the Northwest Seaport Alliance for its portion of the costs. The Authority will (as applicable) use the funds provided by the Northwest Seaport Alliance for payment to Pinna or for reimbursement of the Northwest Seaport Alliance's portion of costs already paid to Pinna by the Authority. Notwithstanding the foregoing, the Northwest Seaport Alliance's share of costs of the Services shall not exceed C\$16,845.36, unless the parties otherwise agree in writing.

Effective Date

4. This Agreement shall become effective on the day it has been executed by the Northwest Seaport Alliance and the Authority.

Termination

5. This Agreement shall terminate THIRTY (30) days after the final Report is issued to the public, or payment of the final invoice from Pinna, or all amounts owing under this Agreement have been paid, whichever is later.

Confidentiality and Use of Information

6. Confidential Information. "Confidential Information" consists of documents, communications or mental impressions concerning or relating to the preparation or completion of the Report or this Agreement that have not been published or have not become a part of the public domain (e.g. the final draft Report and accompanying supporting information). The final Report, and its supporting information, after publication are not Confidential Information. From time to time, the parties may elect to disclose or transmit Confidential Information (a) to each other; (b) to Pinna; (c) to the public stakeholders with the mutual consent of the parties, the Port of Tacoma and the Port of Seattle; or (d) subject to paragraph 8, pursuant to a legal duty to disclose Confidential Information. Confidential Information may be disclosed to or transferred among the parties orally or in writing or by any other appropriate means of communication. The parties intend that no claim of attorney-client privilege or work product immunity or any other privilege be waived as a result of exchange or transmittal of Confidential Information.

7. Maintenance of Confidentiality. The parties agree that all Confidential Information received from each other or Pinna shall be held in strict confidence by the receiving party, and that such Confidential Information shall be used only for conducting such activities that are necessary and proper to carry out the purposes of this Agreement. Each party shall take all necessary and appropriate measures to ensure that any person who is granted access to any Confidential Information or who otherwise assists Pinna in connection with this Agreement, is familiar with the terms of this Agreement and complies with the terms hereof as they relate to the duties of such person.

8. Compelled Disclosure. If Confidential Information becomes the subject of a disclosure request pursuant to any legislation applicable to a party, or of an administrative or judicial order requiring disclosure by a party, such party may satisfy its confidentiality obligations

under this Agreement by either: (a) objecting to production of any such Confidential Information, on grounds of confidentiality and/or any privilege, and seeking an order for protection or other exemption from disclosure; or (b) promptly notifying the other party that generated the Confidential Information at least five (5) business days prior to any such required disclosure and informing the other party, the Port of Tacoma, and the Port of Seattle of all material information concerning the required disclosure.

9. Non-confidential Information. Nothing in this Agreement shall prevent a party from disclosing to others or using in any manner information which such party can show: (a) was known by the party prior to such party's involvement in the Report; (b) has been published or has become part of the public domain other than by the acts, omissions or fault of such party or its agents or employees in violation of this Agreement; (c) has been furnished or made known to a party by third parties (other than those acting directly or indirectly for or on behalf of the other party, the Port of Tacoma, or the Port of Seattle) or was obtained by a party in some manner other than pursuant to this Agreement, as a matter of legal right, without any applicable restrictions on its disclosure; (d) is intended by the parties to no longer be kept confidential such as information that has been made final pursuant to Report approval process, including the final Report and the supporting information for the final Report.

Dispute Resolution

10. If and when there is a disagreement among the parties concerning any aspect of this Agreement that cannot be resolved, the aggrieved party may request the appointment of a neutral mediator to resolve the dispute. Such request shall be a condition precedent to resorting to other remedies that the aggrieved party may have. The mediator shall be selected by common agreement between the parties; however, only the requesting party shall be responsible for paying the fees of the mediator. Each party shall pay its own internal costs for participating in the mediation process. The entire mediation process shall last no longer than fourteen (14) days, starting with the request for appointment of the mediator.

Enforceability by Third Parties

11. This Agreement is not intended for the benefit of any person or entity not a signatory to this Agreement and is not enforceable by any third party.

Amendments

12. This Agreement may be amended only by an agreement in writing signed by both parties and approved by the same process as is this original Agreement.

Severability

13. If a provision or term or condition of this Agreement is wholly or partially operationally invalid, the Agreement shall be interpreted as if the invalid provision, term or condition or part thereof had not been a part of this Agreement.

Counterparts

14. This Agreement may be executed in multiple counterparts and transmitted by electronic means, each such executed counterpart shall be deemed an original, and all counterparts together shall constitute one and the same instrument.

Governing Law

15. This Agreement shall be governed in all respects, including validity, interpretation and effect, by the laws of the Province of British Columbia and the laws of Canada, and in cases where federal and provincial laws conflict, the federal law shall prevail. The parties shall attorn only and exclusively to the jurisdiction of courts of the Province of British Columbia save and except in the circumstance where the Federal Court has exclusive jurisdiction.

16. Legal Relations

- **Independent Governments.** The Parties hereto are independent governmental entities and nothing herein shall be construed to limit the independent government powers, authority or discretion of the governing bodies of each Party. It is understood and agreed that this Agreement is solely for the benefit of the Parties hereto and gives no right to any other party. No joint venture or partnership is formed as a result of this Agreement. No employees or agents of any Party shall be deemed, or represent themselves to be, employees of any of the other Party.
- **Legal obligations.** This Agreement does not relieve either party of any obligation or responsibility imposed upon it by law.
- **Timely Performance.** The requirements of this Agreement shall be carried out in a timely manner according to a schedule negotiated by and satisfactory to the parties.
- **Recording.** A copy of this Agreement shall be posted to each Washington State entity's web site or recorded with the County Auditor.
- **Property Ownership.** No ownership of property will transfer as a result of this Agreement.
- **Records and Audit.** During the term of this Agreement, and for a period not less than six (6) years from the date of termination, records and accounts pertaining to the work of this Agreement and accounting therefore shall be kept by each Washington state Party and shall be available for inspection and audit by representatives of either Party and any other entity with legal entitlement to review said records. If any litigation, claim, or audit is commenced, the records and accounts along with supporting documentation shall be retained until all litigation, claims, or audit finding has been resolved, even though such litigation, claim, or audit continues past the six-year (6) retention period. This provision is in addition to and is not intended to supplant, alter or amend records retention requirements established by applicable state and federal laws. The agreement by the Authority to provide copies of the invoices it receives from any consultants whose work is billed the Ports satisfies the obligations of this Section 16 by the Authority.

Entire Agreement

17. This Agreement constitutes the entire agreement between the parties with respect to the subject matter of this Agreement and supersedes all previous negotiations,

communications and other agreements relating to it unless they are incorporated by reference in this Agreement.

The parties have executed and delivered this Agreement as of the date and year first above written.

SIGNED AND DELIVERED on behalf of)
VANCOUVER FRASER PORT AUTHORITY)
by its authorized signatories:)
)
_____)
Vice President, Corporate Social)
Responsibility)
)
_____)
Date:)
)
_____)
Corporate Secretary)
)
_____)
Date:)

SIGNED AND DELIVERED on behalf of)
NORTHWEST SEAPORT ALLIANCE by its)
authorized signatory:)
)
_____)
Name (please print):)
)
_____)
Title (please print):)
)
_____)
Signature:)
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_____)
Date:)